

**BOARD OF PATENT APPEALS AND INTERFERENCES
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicants : Joseph M. Asher, *et. al.*
Application No. : 10/816,238 Confirmation No. : 9139
Filed : April 1, 2004
For : ELECTRONIC SILENT AUCTION SYSTEM AND
METHOD
Group Art Unit : 3625
Examiner : Robert M. Pond

Mail Stop Appeal Brief-Patents
Commissioner for Patents
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Alexandria, Virginia 22313-1450

RESPONSE TO NOTIFICATION OF NON-COMPLIANT APPEAL BRIEF

Sir:

This paper is responsive to a Notification of Non-Compliant Appeal Brief mailed on October 1, 2008 ("Notification"), which requested correction of an Appeal Brief filed in connection with the above-referenced patent application. Accordingly, Applicants hereby submit an appropriate correction of the Appeal Brief, as follows:

Amendment to the Appeal Brief begins on page 2 of this paper.

Conclusion begins on page 5 of this paper.

AMENDMENT TO THE APPEAL BRIEF

An Appeal Brief was filed in connection with the above-referenced patent application on September 11, 2008 to appeal from the decision of Examiner Robert M. Pond, Group Art Unit 3625, in the Final Office Action of November 19, 2007, rejecting claims **11-18, 20** and **38-64** in the present application. The Notification requested correction of the Appeal Brief's summary of the independent claims under 37 C.F.R. § 41.37(c)(1)(v). Applicants hereby submit the following amendment to the Appeal Brief's summary of the independent claims. Accordingly, Applicants submit that this amendment places the Appeal Brief's summary of claimed subject matter in compliance with 37 C.F.R. § 41.37(c)(1)(v).

In accordance with MPEP § 1205.03(B), Applicants are submitting this Response to the Notification of Non-Compliant Appeal Brief as an Amendment rather than a new Appeal Brief. Under MPEP § 1205.03(B), "when the Office holds the brief to be defective solely due to appellant's failure to provide a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v), an entire new brief need not, and should not, be filed. Rather, a paper providing a summary of the claimed subject matter as required by 37 CFR 41.37(c)(1)(v) will suffice."

Accordingly, please replace the entirety of Section V of the Appeal brief (on page 7 of the Appeal Brief and entitled "Summary of Claimed Subject Matter") with the following amended Section V:

-- V. **SUMMARY OF CLAIMED SUBJECT MATTER**

The presently claimed invention(s) generally relate to computer implemented methods for electronic silent auctioning systems.

Specifically, independent claim 11 is directed to a method that enables the selecting of an item for auction, in which the item is selected from a plurality of items stored on a server. *See, e.g., Specification, page 17, line 30 – page 18, line 4; Figure 1, step 205.* As recited by this claim, an indication that the selected item is available for auction for a period of time is transmitted. *See, e.g., Specification, page 18, lines 19-22.* At least one bid to purchase the selected item is received from each of a plurality of bidders, in which each bid is received before the period of time has expired and each bidder is located remotely from the server. *See, e.g., Specification, page 19, lines 5-8.* As further recited by claim 11, it is determined that the period of time has expired based on determining that: (1) a first quantity of bids that is received before a first time interval is less than a first pre-determined value; and (2) a second quantity of bids that is received before a second time interval is less than a second pre-determined value. *See, e.g., Specification, page 21, lines 3-11.* A winning bid for the selected item is determined based on predetermined criteria. *See, e.g., Specification, page 19, lines 18-20; page 20, lines 3-12.*

Independent claim 41 is directed to an apparatus comprising a processor and a memory that stores instructions which, when executed by the processor, directs the processor to perform the steps of claim 11, described above. More specifically, the instructions direct the processor to select an item for auction, in which the item is selected from a plurality of items stored on a server. *See, e.g., Specification, page 17, line 30 – page 18, line 4; Figure 1, step 205.* The instructions direct the processor to transmit an indication that the selected item is available for auction for a period of time. *See, e.g., Specification, page 18, lines 19-22.* The instructions direct the processor to receive from each of a plurality of bidders at least one bid to purchase the selected item, in which each bid is received before the period of time has expired and each bidder is located remotely from the server. *See, e.g., Specification, page 19, lines 5-8.* The instructions

further direct the processor to determine that the period of time has expired based on determining that: (1) a first quantity of bids that is received before a first time interval is less than a first pre-determined value; and (2) a second quantity of bids that is received before a second time interval is less than a second pre-determined value. *See, e.g.*, Specification, page 21, lines 3-11. The instructions direct the processor to determine a winning bid for the selected item based on predetermined criteria. *See, e.g.*, Specification, page 19, lines 18-20; page 20, lines 3-12.

Independent claim 53 is directed to an article of manufacture comprising a storage medium, in which the storage medium stores instructions which, when executed by a processor, directs the processor to perform the method of claim 11, described above. More specifically, the instructions direct the processor to select an item for auction, in which the item is selected from a plurality of items stored on a server. *See, e.g.*, Specification, page 17, line 30 – page 18, line 4; Figure 1, step 205. The instructions direct the processor to transmit an indication that the selected item is available for auction for a period of time. *See, e.g.*, Specification, page 18, lines 19-22. The instructions direct the processor to receive from each of a plurality of bidders at least one bid to purchase the selected item, in which each bid is received before the period of time has expired and each bidder is located remotely from the server. *See, e.g.*, Specification, page 19, lines 5-8. The instructions further direct the processor to determine that the period of time has expired based on determining that: (1) a first quantity of bids that is received before a first time interval is less than a first pre-determined value; and (2) a second quantity of bids that is received before a second time interval is less than a second pre-determined value. *See, e.g.*, Specification, page 21, lines 3-11. The instructions direct the processor to determine a winning bid for the selected item based on predetermined criteria. *See, e.g.*, Specification, page 19, lines 18-20; page 20, lines 3-12.

Dependent claims **18, 48** and **60** are directed, respectively, to a method, apparatus and an article of manufacture, in which the identifier of the bidder comprises a card number that is coupled with a card reader. *See, e.g.*, Specification, page 15, lines 6-15; page 21, lines 21-30. The card reader is operable to process a card associated with the card number. *Id.* --

CONCLUSION

In view of the foregoing, Appellants submit that all of the pending claims are in proper condition for allowance, and the Board is respectfully requested to overturn the Examiner's rejection of these claims.

It is not believed that extensions of time or fees are required beyond those that may otherwise be provided for in this paper or documents accompanying this paper. However, if additional extensions of time or fees are necessary to prevent abandonment of this application or appeal, then such extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor (including fees for net addition of claims) are hereby authorized to be charged to Deposit Account No. 50-3938.

Respectfully submitted,

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October 31, 2008

Date

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